

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9433 of 1996

With

SPECIAL CIVIL APPLICATION NO.9436 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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TAHSILDAR JADUVANSHSINH

Versus

STATE OF GUJARAT

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Appearance:

Special Civil Applications Nos.9433 and 9436 of 1996

MR NM KAPADIA for Petitioner

MR DA BAMBHANIA for Respondents

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 17/12/96

COMMON JUDGMENT :

1. These two Special Civil Applications arise out of

common facts and both are being decided by this common judgment.

2. In Special Civil Application No.9436 of 1996 the petitioner has raised grievance with regard to the non supply of certain documents included in Annexure 'C' and has prayed for the writ and/or direction against the respondents to supply those documents.

3. The inquiry is pending and in case the relevant documents are not supplied to the petitioner, it is always open for him to raise such a grievance at appropriate stage. The learned counsel for the petitioner himself in the facts and circumstances of this case does not press this Special Civil Application for this purpose at this stage keeping his right to raise the grievance about the non supply of these documents, if the same are not made available to him during the course of inquiry, even if the same are found to be relevant. In this view of the matter, Special Civil Application No.9436 of 1996 is hereby dismissed as not pressed and the notice is hereby discharged with no order as to costs.

4. Special Civil Application No.9433 of 1996 is directed against the petitioner's suspension order dated 16.8.96. The petitioner has been working as a Head Constable in the Police Department and it is alleged that he had gone for the investigation of a criminal case registered under Sections 323, 506(2), 504 and 114 of the IPC on 11.8.96. On 16.8.96 he was placed under suspension by the Dy. Commissioner of Police, North Zone, Surat City on the allegation that he had brought an old lady of 70 years for investigation at the Police Station at the night time and that he had used improper words when inquired in this regard by the Control Incharge by saying that all these things go on in the Police and when any one is called in the Police Station he would always feel troubled and that he would talk to the Commissioner of Police as to what wrong he had committed in doing so. It appears that on 16.8.96 itself the Dy. Commissioner of Police contemplated disciplinary inquiry against the petitioner and passed the suspension order dated 16.8.96, which is impugned in this Special Civil Application.

5. The affidavit-in-reply has been filed and on the basis of this affidavit-in-reply, the grievance of the petitioner stands corroborated to the extent that there are contradictory versions of the old lady's statement recorded on 12.8.96 by the Police Inspector, Katargam and

her statement dated 16.8.96 recorded before Dy. Commissioner of Police. Before the Police Inspector she has stated that because the Police was coming to her house again and again for investigation against her sons she voluntarily went out and occupied seat in the jeep and told the police persons that why they are harassing her sons and she will accompany them to the police station. She was told that a case has been registered against her sons and when she understood the things in the correct perspective, she returned back to her house. As against this, before the Dy. Commissioner of Police she has stated on 16.8.96 that she had been taken by the police for investigation contrary to law.

6. In the facts and circumstances of this case while reading the utterances of the petitioner, which are quoted in the suspension order dated 16.8.96 and looking to his conduct, it may be a case for a regular inquiry against the petitioner, for which he had already been charge-sheeted about which Special Civil Application No.9436 of 1996 has been filed and the petitioner has to face the inquiry on the charges as contained in the charge-sheet dated 11.9.96. However, prima facie it does not appear to be a case of exercise of power for the purpose of suspension with due active and objective application of mind when it is stated in para 5 of the reply itself that the statement was recorded subsequently and the senior officers were called on to inquire into the incident and to make a preliminary inquiry. The utterances, which have been quoted in the suspension order, may not sound happy but when the petitioner has stated what is wrong he had done and he would talk to the Commissioner of Police, prima facie it does not appear that he meant to hurt or disobey anybody.

7. In the facts and circumstances of this case, I find it to be a proper case to place the suspension order dated 16.8.96 with regard to the petitioner in abeyance till the matter is considered by the Commissioner of Police, Surat City himself because in the communication dated 5.10.96 sent to the petitioner by the Dy. Administrative Officer of the office of the Police Commissioner it has been mentioned that on petitioner's representation dated 19.8.96 the Commissioner of Police was reviewing the matter but during the pendency of the review of the representation the suspension shall continue. The Police Commissioner, Surat City is, therefore, directed to decide the review application of the petitioner dated 19.8.96 finally within a period of 3 months and pass appropriate orders thereon in accordance with law, but till the matter is considered and decided

in the review by the Police Commissioner, the suspension order dated 16.8.96 shall remain in abeyance and the petitioner shall be allowed to continue to function as Head Constable as he was functioning and being paid prior to 16.8.96. This order would not come in the way of the authorities with regard to the posting of the petitioner.

With the directions, as aforesaid, Special Civil Application No.9433 of 1996 is disposed of and Rule is made absolute with no order as to costs. Special civil Application No.9436 of 1996 is dismissed as not pressed and the notice is discharged with no order as to costs, as aforesaid.

It will be open for the petitioner to approach this Court again if any adverse order is passed against him.